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Supreme Court, U.S.
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IN THE

Supreme Court of the United States

1993 Term

IN RE: ADOPTION OF STEVEN S., a minor.

Appeal of R.S. (Father)

and J.M.S. (Mother)
Petitioners,

BRIEF IN OPPOSITION TO A PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE UNITED STATES

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21 pp

COUNTER QUESTIONS PRESENTED

I. WHETHER THE PENNSYLVANIA SUPERIOR COURT WAS CORRECT IN TERMINATING THE PARENTAL RIGHTS OF THE PETITIONERS WHEN THE DECISION WAS BASED UPON THE WELL-SETTLED STANDARD OF "CLEAR AND CONVINCING EVIDENCE" ESTABLISHED BY THE UNITED STATES SUPREME COURT?

II. WHETHER THE STANDARD OF "CLEAR AND CONVINCING EVIDENCE" SUPPORTS THE PENNSYLVANIA SUPERIOR COURT'S DETERMINATION TO TERMINATE THE PETITIONERS' PARENTAL RIGHTS WHEN THE DECISION IS BASED UPON:

(i) CLEAR AND CONVINCING EVIDENCE,

(ii) THE CONDITIONS WHICH LED TO THE REMOVAL OF THE CHILD CONTINUES TO EXIST,

(iii) THE PARENTS CANNOT OR WILL NOT REMEDY THOSE CONDITIONS,

(iv) THE SERVICES MADE AVAILABLE TO THE PARENTS ARE NOT LIKELY TO REMEDY THE SITUATION; AND

(v) REMOVAL OF PARENTS RIGHTS ARE IN THE BEST INTEREST AND WELFARE OF THE CHILD?

Both I and II answered in the Affirmative by the Pennsylvania Courts.

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OPINIONS BELOW

The opinion of the Court of Common Pleas of Allegheny County, Pennsylvania filed at Lower Court Docket No. 260 of 1986, is unpublished. It is reproduced on page 66 of Petitioner's Writ. The opinion of the Superior Court of Pennsylvania affirming the order of the lower court at Superior Court Docket Number 1317 Pittsburgh, 1991. It is reproduced on page 64 of Petitioner's Writ. The Supreme Court of Pennsylvania entered an Order denying the Petition for Allowance of Appeal by Order dated March 17, 1993 and no opinion was filed. This Order is reproduced on page 65 of Petitioner's Writ.

JURISDICTION

The Supreme Court of the United States has jurisdiction to hear this petition for a Writ of Certiorari pursuant to 28 U.S.C. Section 1257(a). The order of the Court of Common Pleas terminating Petitioners' parents rights was entered on June 29, 1991 and was timely appealed to the Superior Court of Pennsylvania, Pittsburgh District. The Superior Court filed its decision on July 7, 1992. A Petition for an Allowance of Appeal was timely filed with the Supreme Court of Pennsylvania and an Order denying the Allowance of Appeal was entered March 17, 1993. A Petition for Certiorari has been filed within ninety (90) days of the date of the order of the Supreme Court of Pennsylvania.

CONSTITUTIONAL AND STATUTORY PROVISIONS

Fourteenth Amendment

Section I of the Fourteenth Amendment states: "All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty or property without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Adoption Act of 1990; 23 Pa. C.S.A. §2511(a)(5) provides:

(a) The rights of a parent in regard to a child may be terminated after a petition filed on any of the following grounds:

(5) The child has been removed from the care of the parent by the court or under a voluntary agreement with an agency for a period of at least six months, the conditions which led to the removal or placement of the child continue to exist, the parent cannot or will not remedy those conditions within a reasonable period of time, the services or assistance reasonably available to the parent are not likely to remedy the conditions which led to the removal or placement of the child within a reasonable period of time and termination of the parental rights would best serve the needs and welfare of the child.

Pennsylvania Code, 55 §3130.11, 3130.68. §3130.11 - It is the goal of Children and Youth Services to ensure for each child in this Commonwealth a permanent, legally assured family which protects the child from abuse and neglect §3130.68 - Visiting and communication policies.

(a) The county agency shall provide opportunity for visits between the child and parent as frequently as possible but no less frequently than once every 2 weeks at a time and place convenient to the parties and in a location that will permit natural interaction, unless visiting is: . . .

(3) Not in the child's best interest and is limited or prohibited by court order.

(b) Except in circumstance in which the county agency has reason to suspect that a child is at risk of abuse as defined in Chapter 3490 (relating to child protective services - child abuse), the county agency may not reduce the opportunity for visitation between parents and their child in placement to less than once every 2 weeks without prior court approval of the reduction.

COUNTERSTATEMENT OF THE CASE

Steven James Schoenfeld was born on May 17, 1983 to Janice and Robert Schoenfeld. Robert Schoenfeld has six children, two from a previous marriage and four from his relationship with Janice Schoenfeld. Steven and another child were removed from Janice and Robert Schoenfeld's care in 1983 by Allegheny County Children and Youth Services (CYS). The courts have never returned either of those two children to the Schoenfeld home. Steven was removed for the following reasons: On June 20, 1983, at the age of 1 month, Steven suffered a broken leg. The Schoenfelds failed to seek medical attention for Steven until the following day. He suffered a spiral fracture of the leg, which is caused by twisting force. Bruises were also apparent on Steven's face and behind his ear. The parents explanations for these injuries were completely inconsistent with medical opin-

ion. CYS was notified by employees at the hospital where Steven was being treated. The Juvenile Court held a hearing on the matter and allowed Steven to return home under periodic checks by a visiting nurse. However, within a month, Steven was removed again on an emergency shelter care order when the visiting nurse reported Steven to be in an extremely emaciated condition. Steven was transported to the hospital, and photographs of his emaciated condition were taken. (Tr. dated 6/20/90, p. 108). Physicians diagnosed Steven as suffering from extreme malnutrition. Eventually, after regaining his weight, Steven was released to a temporary foster care placement. At the dependency hearing, Dr. Susan Tiegs, the emergency room physician at Children's Hospital, testified that Steven's malnourished state could only have been the result of deliberate neglect. (Tr. dated 9/15/83, p. 12). She also testified that the bruises on Steven could not have been caused by Steven himself, as the Schoenfelds had suggested (Tr. dated 9/15/83, p. 13). Nor did the radiologist's reports as to the spiral fracture of the leg coincide with the parents' explanation of Steven's fall. Steven was declared dependent in September, 1983, and placed in a foster home where he has remained until present, some 9 years later. Steven has developed normally within this time frame. During the intervening years, CYS has attempted to work with Janice and Robert Schoenfeld in an effort to ultimately reunify Steven with his natural parents, if appropriate. However, the Schoenfelds failed to complete any of the goals stated in their Family Service Plans. The transcripts are replete with testimony from numerous careworkers, all expressing the dismal failure of the parents to do anything constructive in order to aid reunification (Petitioners' Writ, pgs. 71-105). The parents were requested to engage in specific programs in order to learn parenting skills, and, more importantly, to address the abuse issues in counseling sessions. The Schoenfelds repeatedly refused to follow through with any requested evaluations or to assume responsibility for their role in actions which resulted in Steven coming in custody of the

Court. The parents have steadfastly denied that the spiral fracture, bruises, and subsequent malnutrition were the result of their parental abuse or neglect.

The two incidents that led to Steven's removal established that his home environment seriously jeopardized his health and safety because of inadequate explanations for bruises on his face, the leg fracture, and because of a dramatic weight loss and malnourishment for which there was no reasonable explanation other than neglect.

C&YS has vigorously attempted reunification. The incidents that led to Steven's removal strongly suggested that Steven's birth had disrupted the functioning of this family.

Consequently, C&YS required the parents to complete a MHMR assessment and to complete any counseling which the assessment recommended as a condition for Steven's return. To date, the family has not been willing to permit such an assessment.

C&YS also required the parents to participate in a program that addressed parenting skills and child developmental issues and that evaluated the parents' abilities to relate to and to care for Steven. It was approximately two years before the parents were willing to participate in such a program. At that time, the staff of this program concluded that they were not capable of responding to Steven's needs.

With the passage of time during which Steven remained outside the home, the need for successful parental participation in a program designed to assist the parents in responding to Steven's needs increased. Because Steven is being raised in a foster home, he has come to view the foster parents as his parents and his natural parents have become insignificant.

Consequently, it is difficult for his parents to re-establish a relationship with Steven without the assistance of professionals who are capable of assisting the parents in understanding the child's views and needs and the manner in which they must respond. This is an area in which the parents have made no progress because of their inability to work with professionals and to understand Steven's situation.

This case is unusual in that there are presently four other children in the Schoenfeld's home. The children appear to be doing well in a family that appears to be providing appropriate care. This suggests that it may have been possible for the parents to have met the reunification requirements if there had been more cooperation between the parents and relationship between the father and C&YS resulting in the issues leading to Steven's removal being no more resolved today than they were at the time of the removal.

From the outset, the father's response to C&YS was one of complete mistrust, an unwillingness to believe that there was any justification for Steven's removal, and an insistence that matters be done his way because C&YS's methods were based on its bureaucratic needs rather than the needs of the parents and their children.[1] C&YS caseworkers viewed the father's responses as a validation of their beliefs that his personality traits prevented him from being a competent parent for Steven.

The Schoenfelds have not successfully completed any programs that would assist them in understanding the needs of a ten year-old child who has lived his entire life with another family. They have not shown any ability to following the suggestions of any professionals with respect to their responses to Steven. The visits to Steven Schoenfeld became more and more stressful for Steven due to Robert Schoenfeld's repeated defiance to CYS caseworkers. It became so bad that Steven would not see his natural father without crying, sleeplessness, and bedwetting.

The visits were terminated until evaluations by a clinical psychologist, Dr. Anthony Mannarino, could be done to determine

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[1] For example, although the parents knew that C&YS required all letters and cards to Steven to be sent through C&YS rather than directly to Steven, they insisted on repeatedly sending cards and letters directly to Steven at his foster home. Pursuant to C&YS directives, the foster parents refused these cards and letters.

As a result, Steven never received them. Because the letters and cards were returned to the natural parents, they knew that their failure to follow C&YS policy resulted in the loss of any benefit these cards and letters may have provided to Steven and to their relationship with him. Nonetheless, they refused to abide by C&YS policy. Although this is a relatively minor infraction, it reveals the parent's refusal to replace Steven's needs above their own.

their effect upon Steven. He repeatedly recommended that Steven has psychologically and emotionally bonded to his foster parents, and shunned meeting with his natural father due to Robert Schoenfeld's conduct during the visits.

Three more visits were conducted to examine the relationship Robert Schoenfeld conducted with Steven. Dr. Mannarino testified Steven did not like the visits with his father and was nervous and upset when he was forced to see him.

On June 29, 1991, the Honorable A. Stanton Wettick entered an order terminating the parental rights of Robert and Janice Schoenfeld. Both parents appealed this order.

The Superior Court of Pennsylvania affirmed the trial court's decision. The Schoenfelds' petitioned for allowance of appeal to Pennsylvania Supreme Court. The Court entered an order denying the Petition for Allowance of Appeal by order dated March 17, 1993.

The Schoenfelds now have filed this Petition for a Writ of Certiorari to the Supreme Court of the United States.

ARGUMENTS FOR DENYING WRIT

I. THE PENNSYLVANIA SUPERIOR COURT WAS CORRECT IN TERMINATING THE PARENTAL RIGHTS OF THE PETITIONERS BECAUSE THE PROCEDURES UTILIZED WERE BASED UPON THE WELL-SETTLED STANDARD OF "CLEAR AND CONVINCING EVIDENCE" ESTABLISHED BY THE UNITED STATES SUPREME COURT.

This Petition for Writ of Certiorari should be denied because of the exact standard utilized by Pennsylvania in terminating the parental rights of the Petitioners. As discussed in this brief, it has been shown time and time again that the Schoenfelds have failed miserably in all the elements set forth by the Pennsylvania Statute 23 Pa. C.S.A. §2511(a). This clearly and convincingly proved that the Petitioners' parental rights warranted termination.

The goals which govern all Children and Youth Service action

are clearly drawn and fairly administered. It is the goal of CYS to ensure a legally assured family which protects the child from abuse and neglect. (55 Pennsylvania Code §3130.11.)

This basic goal allows a governmental agency to take action that eventually may end with removal of a child from his natural parents. This happens hundreds of times every year. It does not, as in the Schoenfeld's case, automatically give rise to constitutional violations. Since the time of Steven Schoenfeld's removal from his biological parents, CYS has done everything within its power to reunify the family. Solely due to the Schoenfeld's actions, this goal could not be attained. Counseling sessions, psychological testing, therapy, visitations, medical opinions, caseworker evaluations, and family planning services have all been implemented in order to help the Schoenfelds. None were effective.

As mandated by Pa. Code 55 §3130.68, visitations are legally done once every two weeks for children in Steven's situation. This is done for hundreds of parents in similar circumstances and the final result is reunification.

The fact that it failed in the Schoenfeld's case does not invalidate the well-established practice. In fact, it only strengthens the position that the Schoenfelds are unable to be reunified properly, and warrant a termination proceeding. The standard defined by the United States Supreme Court, and utilized by Pennsylvania is clear. As shown in the rest of this brief, the Petitioners' constitutional rights were in no way violated when their parental rights were terminated.

II. USING THE FIVE CRITERIA IN 23 PA. C.S.A. §2511(a)(5), THE PENNSYLVANIA COURT DETERMINED THROUGH CLEAR AND CONVINCING EVIDENCE, THE PARENTAL RIGHTS OF THE PETITIONERS WARRANTED TERMINATION. (i) THE STANDARD FOR TERMINATING PARENTAL RIGHTS IS ONE OF CLEAR AND CONVINCING EVIDENCE.

The Courts have established a solid standard of proof necessary for terminating parental rights. In Santosky v. Kramer, 455 U.S. 745, 102 S.Ct. 1388 (1987), this Court established that the applicable constitutional standard for determining when parental rights can be terminated is one of "clear and convincing" evidence to be established by the moving party. In Santosky, it states:

"A clear and convincing evidence standard strikes a fair balance between the rights of the natural parents and the states' legitimate concerns." Id. at 1403.

The Pennsylvania Courts supported the finding that the Schoenfelds' parental rights be terminated with "clear and convincing evidence" pursuant to Section 2511(a)(5) of the Adoption Act (reproduced on page 7). CYS used no less than five (5) comprehensive conditions to determine if Petitioners' parental rights should be terminated. The evidence presented to satisfy the criterion under this Act was clear and convincing. They are:

1. THE CHILD HAS BEEN REMOVED FROM THE PARENTS' CARE FOR A PERIOD IN EXCESS OF SIX MONTHS . . . Steven James Schoenfeld was removed from the care and custody of his parents in July 1983 and placed in temporary foster care by a Juvenile Court order. He was declared dependent in September 1983 and placed in his present foster home. During the subsequent eight years, Steven has never returned to the custody of his parents. This period of time is well in excess of the six months contemplated by the statute.

2. THE CONDITIONS WHICH LED TO THE REMOVAL OF THIS CHILD CONTINUE TO EXIST . . . The situation which warranted the removal of Steven continues to exist. Janice and Robert Schoenfeld have not made sufficient improvement to prevent the termination of their parental rights. Services offered to

both Janice and Robert Schoenfeld through MH/MR counseling and the Parental Stress Center program were consistently rejected by them. They refused to follow through with the evaluation process or to engage in any sessions aimed at aiding parental skills or identifying and working through the abuse issues. Both Janice and Robert Schoenfeld continue to deny any responsibility for the acts that resulted in Steven coming into care. Spiral fractures are caused by twisting force, not blunt trauma.

Even after the testimony and introduction of photographs depicting Steven's malnourished condition, both Janice and Robert Schoenfeld failed to accept any responsibility for the condition of Steven when he was taken into care. Robert Schoenfeld has consistently shown his inability to work with CYS for the reunification of his family. Rather than attempting to communicate with Steven, Robert Schoenfeld used his visits with Steven to complain about CYS procedures, the way Steven was dressed, the way he spoke, and the way Steven was transported to the sessions. Robert and Janice Schoenfeld chose not to attend to the goals set out in Family Service Plans which they both agreed to and signed. Rather, they have spent the intervening years complaining about the system, caseworkers, and what the courts are doing to them.

The testimony of eight caseworkers (reproduced in Petitioners' Writ, pp. 71-104) assigned to the child and the family since 1983 until present consistently maintained that the Schoenfelds failed to comply with the stated goals of the Family Service Plans. In addition, testimony of a clinical psychologist, Dr. Anthony Mannarino, recommended that continued contact with the Schoenfelds and Steven would be nothing but detrimental. The Juvenile Court of Allegheny County and the Superior Court of Pennsylvania agreed.

3. THE PARENTS CANNOT OR WILL NOT REMEDY THESE CONDITIONS IN A REASONABLE PERIOD OF TIME . . . This Court stated in Santosky that the State's interest in finding a child an alternate permanent home arises when it is clear that the natural parents cannot or will not provide a normal family

home for the child. U.S. at 615 (quoting 50 C. Serv. Law §384.b.1(a)(iv)).

The action of the Petitioners clearly provide they were unable or unwilling to do what was necessary to provide a normal family home for Steven James Schoenfeld. The Superior Court of Pennsylvania determined, through the vast efforts of CYS, the Schoenfelds failed to show any evidence of an ability to care for their child in a normal manner.

At the factfinding stage, the goal of finding an adequate family for a child is served by procedures which promote an accurate determination of whether the natural parents can or will provide a normal home. Id. at 616. The factfinding in this case was extensive and comprehensive, and is the reason no constitutional rights of the Petitioners were violated.

The evidence presented has shown that the natural parents cannot or will not remedy the conditions leading to Steven's removal in a reasonable period of time. Testimony indicated their inability to follow through and successfully complete any programs necessary to improve their parenting abilities. Multiple caseworkers testified that the natural parents were never able to meet the stated CYS conditions necessary to return the child to them and often failed to attend the Family Service Plan conferences. The evidence of record overwhelmingly established that this statutory condition was met.

4. THE SERVICES AND ASSISTANCE REASONABLY AVAILABLE TO THE PARENTS ARE NOT LIKELY TO REMEDY THE CONDITIONS IN A REASONABLE PERIOD OF TIME . . . CYS offered the family every conceivable program in an effort to reunite them. None of these programs proved successful. The programs recommended by CYS to reunify the family included Northern Community MH/MR and Parental Stress Center. The Schoenfelds contacted other organizations they would have preferred to become involved in, yet they either failed to complete or were deemed inappropriate for each of those programs.

These services were implemented to ensure a stable and safe living environment for the family and the child. CYS determined no such environment was created.

In In Re: Winship, 397 U.S. 358, 370, 90 S.Ct. 1068 (1970), it was stated the function of a standard of proof, as embodied in the due process clause, is to determine the desire of confidence our society thinks it should have in the correctness of factual conclusions for a particular type of adjudication.

Id. at 423.

This Court has determined the standard to prove factual conclusions for terminating parental rights is one of "clear and convincing evidence." Santosky, at 1395. Because the Schoenfelds have given every indication over the past eight years that proper reunification will be unsuccessful, the evidence clearly and convincingly established that their parental rights warranted termination.

The programs the Schoenfelds were given the opportunity to utilize were found to be unsuccessful according to the Pennsylvania Courts. No one thwarted their efforts to reunite, and in fact, provided ample programs to achieve such a goal. Yet after 9 years, the parents are no closer to reunification then they were when the child was removed in 1983. Due to this evidence, CYS determined through the preceding four factors, that it would be in the best interest of Steven for the parental rights of Robert and Janice Schoenfeld to be terminated.

In Vitek v. Jones, 445 U.S. 480, 100 S.Ct. 1254 (1980), the Court states the minimum requirements of the due process clause are not diminished by the fact that the State may have specified its own procedures that it deems adequate for determining the preconditioning to adverse official action, such as terminating parental rights. Id at 491. See also, Logan v. Zimmerman Brush Co., 455 U.S. 422, 432, 102 S.Ct. 11488 (1982) (deals with individual liberty grounded in state law, which cannot be removed except for "cause").

The procedures and facts used in determining the parental fitness of the Schoenfelds met the standards of proof established by this Court. Every effort was made to try and help the Schoenfelds develop parenting skills, yet they rejected every effort. In this case, the termination of the Schoenfelds' parental rights was the only alternative to the scenario wholly created by their actions

towards CYS and inaction towards their child.

5. TERMINATION OF PARENTAL RIGHTS WILL BEST SERVE THE NEEDS AND WELFARE AT THE CHILD.

The final requirement under Section 2511(A)(5) is if it would best serve the needs and welfare of the child the termination of parental rights should be implemented. It is inconceivable to return a child to a home in which his own welfare and safety will be in jeopardy.

Steven Schoenfeld has been denied a permanent living environment for a period in excess of eight years. The purpose of the Adoption Act give primary consideration to the needs and welfare of the child. (quoting 23 Pa. C.S.A. §2511(b)). A child such as Steven is not receiving primary consideration to his needs and welfare if his life is in flux for a period exceeding eight years.

The testimony shows that the relationship between Steven and his parents is tenuous at best. There was no satisfactory evidence revealed to show the relationship will advance to a stage higher than the present one.

Because of the aforementioned situation, and the fact that the Schoenfelds have not attempted to remedy with CYS procedures, and failed the five conditions under 23 Pa. C.S.A. §2511, they have shown clear and convincing evidence that termination of their parental rights was proper and fair.

In Lassiter v. Department of Social Services of Durham County, 452 U.S. 35, 101 S.Ct. 2153 (1981), the Court states the Fourteenth Amendment imposes on the State the standards necessary to ensure that judicial proceedings, including parental terminations, are fundamentally fair. Id. at 2673. It is agreeable to the State that high standards should be implemented to protect parents' interest in termination proceedings. That is the sole reason careful, extensive procedures and steps were taken by CYS and the Pa. State Courts. These procedures are fair, clear and convincing.

The years of attempting to remedy the situation between the Schoenfelds and CYS were filled with examination and procedures in an attempt to reunify the family. They all failed.

Testimony of caseworkers, along with a clinical pyschologist, determined that the Schoenfelds are at the stage which warrants the final step of terminating their parental rights. No constitutional problems exist due to the time, effort, and procedural filters set up to determine if indeed a reunification of child and parents was possible. According to 23 Pa. C.S.A. §2511, it was not. These clear and fair procedures produced only convincing evidence that the termination of the parental rights of the Schoenfelds was warranted.

If this situation is permitted to continue it would only harm and frustrate this child. The Superior Court of Pennsylvania was thoroughly fair in determining through the evidence in this case that:

When the unity of the family cannot be preserved, despite the efforts of private county and state assistance and support, the best interests of the child is best served by freeing the child for adoption and providing a home which meets the requirements for proper parental care.

In Re: Angry, 522 A.2d 73, 477 P.A. 322, 383 A.2d 1228 (1978). It has clearly been proven that the Schoenfelds' parental rights warranted termination. No arbitrary decision was made by CYS or the Pennsylvania Courts. It would clearly be in the best interests of Steven to have his parental contact with Robert and Janice Schoenfeld terminated.

The Petitioners do not deny the proper standard for termination of parental rights is "clear and convincing evidence", as established in Santosky. However, the Petitioners do argue, in an inappropriate manner, their due process was denied (Petitioners Writ, pgs. 22-29). The Petitioner's Writ cites cases that are irrelevant to current applications of parental terminations. Petitioners compare the instant case to various cases, which are not analogous to current standards of due process concerning parental terminations.

Although the Petitioners' cases deal with state intervention into the parent-child relationship, none of the cases are directly applicable to the termination of parental rights of unfit parents. They are unnecessarily cited in this case.

The standard for terminating parental rights has been well-established since Santosky. The Pennsylvania Superior Court followed the appropriate law and their decision is supported by the facts. The Petitioners have raised no new constitutional challenges to terminating parental rights. Therefore, Respondents urge that this Petition for Writ of Certiorari be denied.

CONCLUSION

For the foregoing reasons, Petition for the Writ of Certiorari should be denied.

Respectfully submitted,

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